

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

C & D BATTERY DIVISION---
ELTRA CORPORATION

and

Case 10--CA--18003

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, UAW--AFL--CIO

DECISION AND ORDER

Upon a charge filed on March 22, 1982, by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW--AFL--CIO, herein called the Union, and duly served on C & D Battery Division---Eltra Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 10, issued a complaint on April 28, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that, at all times since June 26, 1981, the

Union has been, and is, the exclusive representative of all employees in the appropriate unit. The complaint also alleges that, on or about December 8, 1981, Respondent unilaterally, and without notice to or consultation with, the Union, laid off unit employees and thereby violated Section 8(a)(5) and (1). On May 4, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On June 3, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on June 10, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On June 7, 1982, Respondent filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its response to the Notice To Show Cause, Respondent admits conducting a layoff of unit employees without notice to, or consultation with, the Union. However, it denies that it was under any obligation to bargain with the Union concerning the layoff and contests the validity of the Union's certification. Respondent also defends against its alleged refusal to bargain on

the grounds that its layoff of unit employees was economically motivated and without union animus. Finally, Respondent contends that the charge and the amended charge, upon which the complaint herein is based, do not state a cause of action under Section 8(a)(5).

The record herein reveals that, on April 1, 1981, the Regional Director for Region 10, in Case 10--RC--12351,¹ issued a Decision and Direction of Election in which he found the following unit appropriate for purposes of collective bargaining:

All production and maintenance employees employed by the Employer at its Conyers, Georgia facility including casters, pasting employees, brushers, assemblers, finishers, plate wrappers, chargers, shipping and receiving employees, maintenance employees, truckers, janitors, quality control employees, oxide mill employees, but excluding service technicians, the engineering lab technician, the material control clerk, material control expeditors, the payroll clerk, the plant engineer clerk, the registered nurse, the secretary to the plant manager, the traffic secretary, the personnel secretary/receptionist, office clerical employees, guards and supervisors as defined in the Act.

Thereafter, Respondent filed with the Board a timely request for review of the Decision and Direction of Election, alleging that the Regional Director erroneously included the quality control and oxide mill employees in the unit and erroneously excluded Eugene Ellis as a supervisor. On April 29, 1981, the

¹ Official notice is taken of the record in the representation proceeding, Case 10--RC--12351, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Board denied Respondent's request for review. Thereafter, an election was held on May 1, 1981. The tally of ballots shows that 95 votes were cast for, and 89 votes were cast against, the Union; there were 2 challenged ballots.

On May 8, 1981, Respondent timely filed eight objections to conduct affecting the election. On June 26, 1981, the Acting Regional Director for Region 10 issued a Supplemental Decision and Certification of Representative in which he overruled Respondent's objections. Thereafter, Respondent filed a timely request for review of the Acting Regional Director's decision, alleging that its objections should not have been overruled and, in the alternative, that a hearing on its objections should have been held. On August 26, the Board denied Respondent's request for review. On March 9, 1982, the Board issued a decision in Case 10--CA--17445,² finding that, following the Union's certification, Respondent violated Section 8(a)(5) by refusing to bargain with the Union at its request. It is therefore clear that, at the time of the layoff, Respondent was under an obligation to bargain with the Union and, to the extent that Respondent defends its refusal to do so by contesting the validity of the Union's certification, it raises issues not properly litigable in an unfair labor practice proceeding.³ Further, a respondent which acts in derogation of its bargaining

² 260 NLRB No. 75 (1982).

³ See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941).

obligations at a time when it is contesting the validity of a union's certification acts at its peril.⁴

Nor does the fact that Respondent's layoff may have been economically motivated justify its unilateral action. While an employer may properly decide that an economic layoff is required, once such a decision is made the employer must nevertheless notify the union and, upon request, bargain with it concerning the layoff.⁵

Finally, we find no merit in Respondent's contention that the charge in this case does not properly allege a violation of Section 8(a)(5). The charge, as amended, alleges that Respondent had "refused under Section 8(a)(5) to bargain with the union regarding the discriminatory layoff in violation of their own seniority policy." It may well be, as Respondent contends, that whether the layoff was discriminatory or in violation of its seniority policy is irrelevant regarding an alleged violation of Section 8(a)(5). However, the essence of the charge is that Respondent refused to bargain concerning the layoff and, as such, properly alleges a violation of Section 8(a)(5).

Accordingly, we find that, by laying off unit employees without notice to, or consultation with, the Union, at a time when

⁴ See, e.g., Mike O'Connor Chevrolet-Buick-GMC Co., Inc., 209 NLRB 701 (1974). Here, Respondent's unilateral action occurred subsequent to the Board's resolution of its election objections and certification of the Union.

⁵ Clements Wire & Manufacturing Company, Inc., 257 NLRB No. 143 (1981).

the Union was the exclusive bargaining representative of unit employees, Respondent violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. C & D Battery Division---Eltra Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW--AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By laying off unit employees on or about December 8, 1981, without notice to, or consultation with, the Union, Respondent violated Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act. Thus, we shall order Respondent, upon request, to bargain with the Union concerning the December 8, 1981, layoff. Further, since Respondent's refusal to bargain can only be remedied by restoration of the status quo ante, we shall order that Respondent make whole those employees laid off by paying them their normal wages from the date of the layoff until the earliest of the following conditions are met: (1) mutual agreement is reached with the Union; (2) good-faith

bargaining results in a bona fide impasse; (3) the failure of the Union to commence negotiations within 5 days of the receipt of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith.⁶ Backpay shall be based on the earnings which the employees normally would have received during the applicable period, less any net interim earnings, and shall be computed in the manner set forth in F. W. Woolworth Company,⁷ with interest thereon computed in the manner set forth in Florida Steel Corporation.⁸

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, C & D Battery Division---Eltra Corporation, Conyers, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Laying off unit employees unilaterally and without notice to, or consultation with, the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

⁶ See Gulf States Manufacturing, Inc., 261 NLRB No. 119 (1982).
⁷ 90 NLRB 289 (1950).
⁸ 231 NLRB 651 (1977). See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW--AFL--CIO, as the exclusive representative of its employees in the appropriate unit concerning the layoff conducted on or about December 8, 1981. The appropriate unit is:

All production and maintenance employees employed by the Employer at its Conyers, Georgia facility including casters, pasting employees, brushers, assemblers, finishers, plate wrappers, chargers, shipping and receiving employees, maintenance employees, truckers, janitors, quality control employees, oxide mill employees, but excluding service technicians, the engineering lab technician, the material control clerk, material control expeditors, the payroll clerk, the plant engineer clerk, the registered nurse, the secretary to the plant manager, the traffic secretary, the personnel secretary/receptionist, office clerical employees, guards and supervisors as defined in the Act.

(b) Make whole those employees laid off on or about December 8, 1981, for any loss of pay suffered as a result of its unlawful conduct in the manner set forth in the ''Remedy'' section of this Decision.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Conyers, Georgia, facility copies of the attached notice marked "'Appendix.'"⁹ Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C.

August 31, 1982

John H. Fanning, Member

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

⁹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT, without notice to, or consultation with, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW--AFL--CIO, lay off unit employees. The bargaining unit is:

All production and maintenance employees employed by the Employer at its Conyers, Georgia facility including casters, pasting employees, brushers, assemblers, finishers, plate wrappers, chargers, shipping and receiving employees, maintenance employees, truckers, janitors, quality control employees, oxide mill employees, but excluding service technicians, the engineering lab technician, the material control clerk, material control expeditors, the payroll clerk, the plant engineer clerk, the registered nurse, the secretary to the plant manager, the traffic secretary, the personnel secretary/receptionist, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain in good faith with the Union concerning our layoff of unit employees on or about December 8, 1981.

WE WILL make whole those employees laid off on or about December 8, 1981, for any loss of pay suffered as a result of our unlawful conduct, with interest.

C & D BATTERY DIVISION---ELTRA CORPORATION

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Marietta Tower, 101 Marietta Street, NW, Suite 2400, Atlanta, Georgia 30323, Telephone 404--221--2886.